

July 18, 1997

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Via Hand Delivery

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In the Matter of Advanced Television Systems and Their Impact Upon the Existing
Television Broadcast Service, MM Docket No. 87-268



Dear Mr. Caton:

Enclosed please find twelve (12) copies of NPR's Opposition to the Petition for Reconsideration of "Certain Channel 2-6 Licensees."



The original opposition was previously filed with the Commission on June 9, 1997 in response to the filing of the petitioner's Petition for Reconsideration. Pursuant to Section 1.429(f) of the Commission's rules, oppositions to a petition for reconsideration in a rulemaking proceeding "shall be filed within 15 days after the date of public notice of the petition's filing," which in this proceeding occurred on July 3, 1997. 62 Fed. Reg. 36066 (July 3, 1997). For the Commission's convenience, and to avoid any uncertainty regarding the timeliness of NPR's Opposition pleading, we are hereby re-filing the pleading.



Please direct any questions you may have regarding this matter to the undersigned.

Sincerely,

Gregory A. Lewis
Associate General Counsel

cc: Kurt A. Wimmer, Esq./Ericka T. King, Esq.
(Counsel to "Certain Channel 2-6 Licensees")

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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
and Their Impact upon the)
Existing Television Broadcast Service)

To: The Commission

**OPPOSITION OF
NATIONAL PUBLIC RADIO, INC.
TO
PETITION FOR RECONSIDERATION
OF "CERTAIN CHANNEL 2-6 LICENSEES"**

National Public Radio, Inc. ("NPR") hereby opposes the Petition for Reconsideration filed by "Certain Channel 2-6 Licensees" seeking reconsideration of the Commission's Sixth Report and Order in the above-captioned proceeding. Petition For Reconsideration of Decision Regarding Channels 2-6, filed by "Certain Channel 2-6 Licensees", MM Docket No. 87-268, May 29, 1997 [hereinafter "Channels 2-6 Petition"]. Advanced Television Systems, Sixth Report and Order, MM Docket No. 87-268, rel. Apr. 21, 1997, 62 Fed. Reg. 26,967 (May 14, 1997) [hereinafter "Sixth Report and Order"].

NPR is a non-profit, noncommercial membership organization of more than 570 full-service public radio stations. NPR also produces and distributes such noncommercial educational radio programming as *All Things Considered*, *Morning Edition*, *Talk of the Nation*, and *Performance Today*, and manages the Public Radio Satellite Interconnection System.

In seeking reconsideration of the Commission's Sixth Report and Order, Petitioners ask the Commission, *inter alia*, to treat DTV Channel 6 no differently than it does any other DTV channel allotment. At least to that extent, and for the following reasons, the Petition is wholly without merit and should be rejected.

First, the Petition fails to address, or even acknowledge, the long history of interference between television channel 6 and adjacent channel noncommercial educational FM licensees. As NPR previously recounted for the record in this proceeding:

The channel 6 interference issue has been both vexing to the Commission and the source of contention among radio and television broadcasters and consumer electronics equipment manufacturers. See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, Memorandum Opinion and Order, 58 R.R.2d 629 (1985) [hereinafter "Channel 6 Memorandum Opinion and Order"]. Since 1985, the Commission has maintained stringent rules requiring noncommercial educational FM reserved-band licensees to protect the signal of adjacent channel 6 television licensees. See id. at 630-31; 47 C.F.R. § 73.525.

That has been the case, even though the record in the Channel 6 interference proceeding established that the interference problems were primarily attributable to the inferior performance characteristics of television receivers. And, while the existing channel 6 interference rules have eliminated most instances of interference, that result has not been without a direct and significant cost to noncommercial educational FM radio. Indeed, despite the strong Federal interest in extending public radio service to all, 47 U.S.C. § 396(a), noncommercial educational FM radio in the United States has been severely restrained by the presence of TV channel 6 broadcasters in the spectrum immediately adjacent to the noncommercial FM reserved spectrum.

Reply Comments of National Public Radio, Inc., MM Docket No. 87-268, at 3-4, filed Dec. 23, 1996 (citations omitted). This history fully justified the Commission's high standard for the making of any DTV channel 6 allotments: "the absence of any other readily available allotment opportunity that would meet the minimum spacing requirements." Advanced Television Systems, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd. 10968, at ¶ 73 (1996).

Second, and given the applicable standard, the failure of the Charlotte field tests to demonstrate the absence of interference is damning, not supportive of Petitioner's claim. Compare Channels 2-6 Petition at 8 ("The point is simply that the Charlotte tests are at best inconclusive on the point. No conclusions can yet be drawn about Channels 2 through 6. None at all.") Indeed, because the Charlotte tests were conducted at power levels well below "those expected to be employed in practice", Channels 2-6 Petition at 4 (quoting Charlotte Report at 4), the fact that interference was detected counsels against the allotment of DTV channel 6. See NPR Reply Comments at 7.

Third, the longer range propagation characteristics of channel 6, which Petitioners cite approvingly, Channels 2-6 Petition at 3, 5 & 8-9, make adjacent channel interference even more problematic. While the advantage of favorable propagation characteristics is a much greater net area with relatively low field strength, this is precisely the area (along with the area immediately adjacent to NCE transmitters) most adversely affected by the proximity between television channel 6 and noncommercial educational FM stations. In addition, the "all or nothing" characteristic of DTV reception may mean that the television viewer's signal is completely unusable rather than merely impaired as a result of adjacent channel interference. Moreover, at the lower signal strength generated by DTV transmission, much lower desired-to-undesired ratios will be inherent between the DTV signals and adjacent spectrum non-commercial users, and the testing to date has not addressed the problems that will effect both sets of users.

Fourth, while the Petitioners might understandably only consider the possibility of interference to the reception of television channel 6, the Commission must consider the interests of adjacent channel noncommercial FM stations and the need to avoid interference from wideband DTV signals. See NPR Reply Comments at 7-8.

Finally, and as a related matter, the Commission is not compelled to take whatever action the majority of commenters may request in a particular rulemaking proceeding. See Channels 2-6 Petition at 7 ("The undersigned submit that the Sixth Report and Order misreports the balance of the comments"), id. (contending that the Sixth Report and Order was "contrary to the nearly unanimous consensus of commenters"). Rather, the Commission is obligated to administer Title III of the Communications Act "as the public convenience, interest, or necessity requires," 47 U.S.C. § 303 (emphasis added), and not according to the common interests of a preponderance of the parties to a rulemaking proceeding.

In sum, the avoidance of DTV channel 6 allotments is compelled by the long history of adjacent channel interference, the record in this proceeding, and the public interest. Accordingly, the Channel 2-6 Petition, at least to the extent it seeks reconsideration of the Commission's treatment of DTV channel 6 allotments in the Sixth Report and Order, should be rejected.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.


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June 9, 1997

CERTIFICATE OF SERVICE

I, Muriel Dodd, hereby certify that a copy of the foregoing Opposition of National Public Radio, Inc. to Petition for Reconsideration of "Certain Channel 2-6 Licensees", was sent this 9th day of June, 1997, by first class mail, postage prepaid to the following:

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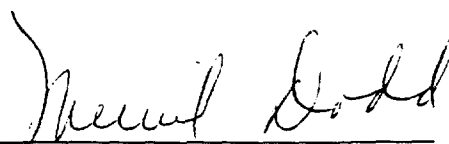
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